

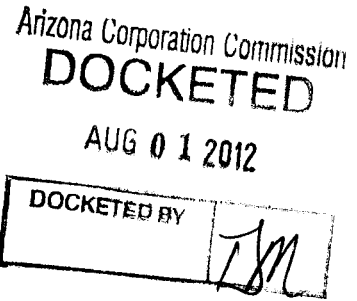
ORIGINAL



Date: July 27, 2012

To: **Docket Control**
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

From: Robert T. Hardcastle
Payson Water Co., Inc.



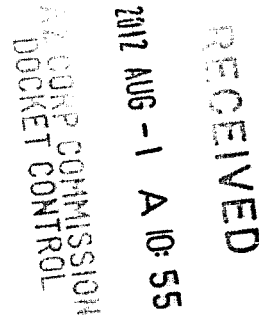
FOR FILING ORIGINAL AND 13 COPIES INTO:

DOCKET NO. W-03514A-12-0007

Smith vs. Payson Water Co.

By:


Robert T. Hardcastle



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1 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
2 Motion to Quash Brooke Utilities, Inc. as a party to the Complaint.

3 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
4 Motion to Dismiss and Motion to Deny.

5 On April 9, 2012 Payson Water Co. filed a Reply to Complainant's Response to
6 Payson Water Co.'s Motion to Dismiss and Motion to Deny.

7 On April 9, 2012 Payson Water Co. also filed a Reply by Payson Water Co. to
8 Complainant's Response and Objection to Respondent's Motion to Quash Brooke
9 Utilities, Inc. as a Party to the Complaint.

10 On April 13, 2012 Complainant filed a Response and Objection to Respondent's
11 Reply to Complainant's Response to Respondent's Motion to Dismiss and Deny.

12 On April 20, 2012 the Utilities Division of the Arizona Corporation Commission
13 ("Staff") filed a Notice of Filing regarding the status of a subpoena issued to Martin's
14 Trucking.

15 On May 3, 2012 Staff filed a Status of Mediation indicating that a settlement was
16 not reached by the parties and requested a hearing be scheduled.

17 On June 18, 2012 a Procedural Order was issued which set forth the hearing date
18 of August 7, 2012 and the compliance dates and deadlines as it relates to this Docket. In
19 addition, the Procedural Order provided that Payson Water Co. and Staff shall file
20 responsive rejoinder testimony no later than July 30, 2012 (see Procedural Order at page
21 2, lines 19-20).

22 On July 18, 2012 Complainant Smith filed a Notice of Complainant's Initial
23 Discovery and Disclosure.

24 On July 23, 2012 Complainant Smith filed a Notice of Complainant's Second
25 Discovery and Disclosure.

26 Payson Water Co. ("PYWCo") does hereby file this Supplemental Motion to
27 Quash Brooke Utilities, Inc. as a Party to this Complaint.

1 PYWCo reaffirms its previous arguments that Brooke Utilities, Inc. (“Brooke”) is
2 not an Arizona public service corporation pursuant to Article XV and A.R.S. §§ 40-250
3 and 40-251.

4 Brooke is not regulated by the Utilities Division of the Arizona Corporation
5 Commission (the “Commission”). Brooke properly and timely files annual registration
6 reports with the Corporations Division of the Commission as does every corporation
7 doing business in the State of Arizona.

8 Brooke does not provide water service to the Complainant or any customers with
9 the Mesa del Caballo service area.

10 Brooke does not hold the certificate of convenience and necessity (“CC&N”) to
11 provide water service to the customers of Mesa del Caballo. In *Gehring et al vs. Payson*
12 *Water Co.* (Docket No. W-03514A-12-0008) the Commission Staff’s counsel confirmed
13 that the CC&N for the Mesa del Caballo water system is held by PYWCo.

14 Brooke has never filed a rate proceeding at the Commission except as the holding
15 company sponsor for one of its water subsidiaries.

16 Brooke has never argued before the Commission in support of, or on behalf, of
17 itself being adjudged a public service corporation with the definition of those applicable
18 sections set forth above.

19 Brooke functions as the stock holding company of PYWCo and its other water
20 subsidiaries.

21 PYWCo operates within the definition of R-14-2-103 (A)(3)(h) as a Class C public
22 service corporation with aggregate annual revenues less than \$999,999. As classified
23 water utility public service corporation the Mesa del Caballo water system would be
24 classified a Class D water utility company. Accordingly, PYWCo does not meet the
25 criteria of A.R.S. R14-2-801 (1) as an affiliate and, more specifically, A.R.S. R14-2-802
26 (1) which provides that “These rules are applicable to all Class A investor-owned
27 utilities under the jurisdiction of the Commission.” (emphasis added). PYWCo is a
28 Class C water utility, not a Class A water utility, and Brooke is not a water utility
29 company in any form.

1 Complainant argues that Brooke and PYWCo are “joined at the hip”. Although this
2 reference is confusing the statement is not accurate. Brooke operates as a completely
3 separate business organization; has its own Board of Directors and officers; holds
4 separate annual shareholder meetings; directs employees that PYWCo does not have;
5 does not file annual reports with the Commission’s Utilities Division; and, maintains
6 separate books and records from PYWCo and its other subsidiaries. As a holding
7 company parent of various water subsidiaries, Brooke’s relationship with its subsidiaries
8 is not unique in the Arizona where other non-public service corporation parent holding
9 companies own regulated subsidiaries. Complainant’s argument that Brooke “in fact”
10 (see Complainant “Response and Objection to Respondent’s Motion to Quash Brooke
11 Utilities, Inc. as a Party to the Complaint and Motion to Deny”, page 3, item 3) does
12 provide water service to the Complainant and other customers is hollow and without
13 substantiation. There exists no such fact and Complainant’s have made no evidentiary
14 showing of this fact because there is no fact to prove. Complainants believe that because
15 they say something is so that it must be so.

16 In Gehring this same issue was argued before the Administrative Law Judge.
17 While conditioning his ruling on the matter the Judge ruled that the Complainant’s were
18 not prejudiced by proceeding with the Complaint, exclusive of Brooke, and that any
19 remedies recommended by the Judge and ordered by the Commission could be fully
20 exacted upon PYWCo in settlement of the dispute between the parties. Only if, the Judge
21 concluded, PYWCo was unable or incapable of performance of the decision remedies
22 reached by the Commission could the Commission look to Brooke for performance of the
23 remedies. In Gehring the Complainant’s voluntarily accepted this ruling and proceeded
24 with the complaint litigation. Complainant’s now offer no new or unique argument to
25 justify changing their position on this matter.

26 By this supplemental filing PYWCo respectfully requests the Commission to direct
27 the Complainant to amend its Complaint excluding all references to Brooke as a party
28 thereto and hereafter refrain from referring to Respondent’s as anything other than
29 PYWCo.

1
2 RESPECTFULLY SUBMITTED this 30th day of July 2012.

3 Payson Water Co., Inc.

4
5 By: 

6 Robert T. Hardcastle

7 *In Propia Persona*

8
9 ORIGINAL and 13 copies filed
10 this 30th day of July 2012, with:

11
12 **Docket Control**
13 **Arizona Corporation Commission**
14 **1200 West Washington St.**
15 **Phoenix, AZ 85007**

16
17 And copies mailed to the following:

18
19 Lynn Farmer, Administrative Law Judge
20 HEARING DIVISION
21 Arizona Corporation Commission
22 1200 West Washington St.
23 Phoenix, AZ 85007

24
25 Arizona Reporting Service, Inc.
26 2200 No. Central Ave. Suite 502
27 Phoenix, AZ 85004-1481

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29 J. Alain Smith
30 8166 Barranca Rd.
31 Payson, AZ 85541

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33 Janice Alward, Chief Counsel
34 Legal Division
35 Arizona Corporation Commission
36 1200 West Washington St.
37 Phoenix, AZ 85007

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39 Steve Olea
40 Utilities Division

1 Arizona Corporation Commission
2 1200 West Washington St.
3 Phoenix, AZ 85007

4
5 Robin Mitchell, Esq.
6 Arizona Corporation Commission
7 1200 West Washington St.
8 Phoenix, AZ 85007

9
10 By: _____
11 Robert T. Hardcastle
12 Payson Water Co., Inc.

13
14 **END**
15
16

1
2
3 Date: July 27, 2012
4

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6 **Arizona Corporation Commission**
7 **1200 West Washington St.**
8 **Phoenix, AZ 85007**
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10 From: Robert T. Hardcastle
11 Payson Water Co., Inc.
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